

Western Australia

**Insurance Commission of Western Australia Act
1986**

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Insurance Commission of Western Australia Act 1986

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Western Australia

Insurance Commission of Western Australia Act 1986

**An Act to provide for the constitution and functions of the Insurance
Commission of Western Australia, and for related purposes.**

[Long title inserted by No. 45 of 1996 s.4.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Insurance Commission of Western Australia Act 1986*¹.

[Section 1 amended by No. 45 of 1996 s.5.]

2. Commencement

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Definitions

In this Act, unless the contrary intention appears —

“**board of commissioners**” means the governing body of the Commission provided for by section 5(1);

“**board of directors**” means the governing body of the Corporation provided for by section 29(1);

“**borrow**” includes —

- (a) reborrow;
- (b) obtain credit; and
- (c) arrange for financial accommodation;

“**business undertaking**” includes any person, corporation, trust, joint venture, government agency or other entity engaging or intending to engage in economic activity;

“**Commission**” means the body continued by section 4 under the corporate name “Insurance Commission of Western Australia”;

“**Commission account**” means a Fund, a fund established under section 7(4)(a) or a trust of which the Commission is a trustee under section 7(4)(c);

“commissioner” means —

- (a) a person appointed to the board of commissioners under section 5(1)(a), including the chairman and the deputy chairman of the board of commissioners; or
- (b) the managing director;

“community organisation” means —

- (a) an association incorporated under the *Associations Incorporation Act 1987*;
- (b) a company limited by guarantee that is registered under section 150 of the *Corporations Act 2001* of the Commonwealth; or
- (c) a company holding a licence that continues in force under section 151 of the *Corporations Act 2001* of the Commonwealth;

“Corporation” means the State Government Insurance Corporation established by this Act;

“debt paper” means inscribed stock, bonds, debentures, debentures with coupons annexed or any other bearer securities, or instrument evidencing indebtedness;

“director of the Corporation” means —

- (a) the managing director; or
- (b) a person appointed to the board of directors under section 29(1)(b), including the deputy chairman of the board of directors;

“eligible community organisation” has the meaning given in section 3A;

“Fund” means a fund established under section 16;

“insurance” includes assurance, co-insurance, re-insurance, guarantee and surety;

“insurer” means a corporation carrying on business under the *Insurance Act 1973* or the *Life Insurance Act 1945*² of the Commonwealth or under each of those Acts;

s. 3A

“managing director” means the chief executive officer of the Commission appointed under section 11;

“policy” includes contract;

“public authority” means —

- (a) a department of the Public Service;
- (b) an agency, authority or instrumentality of the Crown in right of the State; or
- (c) a body, whether corporate or unincorporate, that is established or continued for a public purpose under a written law, other than a body, or a body of a class, that is excluded by regulation from the operation of this definition;

“risk management” does not include the management of risks associated with an investment;

“Treasurer” means the Treasurer of the State.

[Section 3 amended by No. 45 of 1996 s.6; No. 34 of 2002 s.4.]

3A. Eligible community organisations

- (1) A community organisation is an eligible community organisation for the purposes of this Act if the Treasurer has made a determination under subsection (2) in respect of the organisation or a class of organisations of which it is a member.
- (2) The Treasurer may determine that an organisation, or all organisations of a particular class, is or are eligible to participate in an arrangement managed and administered by the Commission for the insurance and risk management of eligible community organisations.

[Section 3A inserted by No. 34 of 2002 s.5.]

Part II — Insurance Commission of Western Australia

[Heading inserted by No. 45 of 1996 s.7.]

Division 1 — The Commission and the board of commissioners

[Heading inserted by No. 45 of 1996 s.7.]

4. Insurance Commission of Western Australia: corporate identity and status

- (1) The body corporate established under this section as enacted before the commencement of section 8 of the *Acts Amendment (ICWA) Act 1996*¹ is continued under the corporate name “Insurance Commission of Western Australia” without affecting its corporate identity or its rights and obligations.
- (2) The Commission is a body corporate with perpetual succession and a common seal.
- (3) Proceedings may be taken by or against the Commission in its corporate name.
- (4) The Commission may use and operate under one or more trading names approved by the Minister being —
 - (a) an abbreviation or adaptation of its corporate name; or
 - (b) a name other than its corporate name.

[Section 4 inserted by No. 45 of 1996 s.8.]

4A. Agent of Crown

The Commission is an agent of the Crown in right of the State and has the status, immunities and privileges of the Crown except as otherwise prescribed.

[Section 4A inserted by No. 45 of 1996 s.8.]

5. Board of commissioners

- (1) The Commission shall have a board of commissioners comprising —

- (a) not less than 3 or more than 6 persons appointed as commissioners by the Governor on the nomination of the Minister; and
 - (b) the managing director who shall be a commissioner *ex officio*.
- (2) One of the commissioners referred to in subsection (1)(a) shall be appointed by the Governor on the nomination of the Minister to be chairman of the board of commissioners and another of those commissioners shall be so appointed to be deputy chairman of the board of commissioners.
- (3) The board of commissioners is the governing body of the Commission with authority, in the name of the Commission, to exercise and perform the powers, functions and duties conferred or imposed on the Commission under this Act.
- (4) Schedule 1 shall have effect with respect to the board of commissioners and the commissioners and with respect to the acts, proceedings and determinations of the board of commissioners.
- (5) A commissioner referred to in subsection (1)(a) shall be paid out of the funds of the Commission such remuneration and travelling and other allowances as are determined in the case of that commissioner by the Minister on the recommendation of the Minister for Public Sector Management.

[Section 5 amended by No. 45 of 1996 s.9.]

Division 2 — Functions and powers of the Commission

6. Functions

The functions of the Commission are —

- (a) to issue, or cause to be issued, and undertake liability under policies of insurance as required by the *Motor Vehicle (Third Party Insurance) Act 1943*;

- (b) to issue and undertake liability under policies of insurance as required by —
 - (i) section 154(6); or
 - (ii) section 163,
of the *Workers' Compensation and Injury Management Act 1981*;
- (c) to manage and administer insurance and risk management arrangements on behalf of public authorities;
- (ca) to manage and administer insurance and risk management arrangements on behalf of eligible community organisations;
- (d) to provide services, facilities and advice to public authorities in respect of the management of claims against them or against funds maintained or administered by them under any written law;
- (e) to initiate, or participate in, and promote programmes and schemes for —
 - (i) research into the treatment of industrial diseases and personal injury; and
 - (ii) research into, education for, and promotion of public awareness relating to, the prevention of industrial diseases, personal injury and accidental death,

being programmes and schemes relevant to risks in respect of which the Commission is to provide insurance under paragraph (a) or (b) or manage and administer arrangements under paragraph (c) or (ca);
- (f) to provide advice to the Government on matters relating to insurance and risk management;
- (g) to invest and manage moneys and other property under its control; and

- (h) to do such other acts and things or engage in such other activities as it is authorized or required to do or engage in under any written law.

[Section 6 amended by No. 49 of 1992 s.28; No. 45 of 1996 s.10; No. 34 of 2002 s.6; No. 42 of 2004 s. 174.]

7. Powers

- (1) The Commission has power to do, in the State or elsewhere, all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting the generality of subsection (1), the powers of the Commission referred to in that subsection include power —
 - (a) with the approval of the Treasurer, to borrow moneys in accordance with this Act and give or arrange security for such borrowings;
 - (aa) to fix and collect such fees, charges or other payments as it considers appropriate for or in respect of services it provides;
 - (b) to lend moneys and provide credit;
 - (c) with the approval of the Treasurer and subject to such terms and conditions as the Treasurer may approve, to open, maintain and operate accounts in the name of the Commission with such bank or banks as the Treasurer may approve for the purposes of section 16(7) and for such other purposes as the Treasurer may approve;
 - (d) to issue, draw, make, accept, endorse, and discount bills of exchange and promissory notes;
 - (e) to acquire, hold, lease, sublease, license, exploit, encumber, deal in, dispose of, divide, subdivide, improve, develop or alter property or do anything else that a natural person could do in respect of property;
 - (f) to form or establish, or participate in the formation or establishment of, any business undertaking;

- (g) to subscribe for, invest in or otherwise acquire any investment and to deal in or dispose of any investment;
 - (h) to enter into a partnership or an arrangement for sharing of profits;
 - (i) to underwrite issues of shares in, or debentures or other securities of, any business undertaking;
 - (j) to appoint or engage agents, custodians, brokers and attorneys;
 - (k) to exercise any right conferred upon the Commission to appoint a director of, or hold office in, a business undertaking;
 - (l) to establish advisory groups and act on the advice of such groups;
 - (m) to act as agent for other persons or public authorities;
 - (n) to do and suffer in relation to insurance policies that it has issued or caused to be issued, all such acts and things as an insurer may do and suffer in the course of carrying on business;
 - [(o) deleted]*
 - and
 - (p) to do anything incidental to any of its powers.
- (3) For the purposes of section 6(b) the Commission shall be deemed to be an incorporated insurance office approved under section 161 of the *Workers' Compensation and Injury Management Act 1981* by the Minister to whom the administration of that Act is committed by the Governor.
- (4) Without limiting subsection (1) or (2), the Commission has power to arrange reinsurance of risks and, in relation to its functions under section 6(c) or (ca), has power —
- (a) to establish, manage and maintain any fund or funds (in addition to the Funds) for the management of insurance arrangements of, or for risk management for, public authorities or eligible community organisations;

- (b) to arrange insurance of risks for public authorities or eligible community organisations; and
 - (c) to act as trustee of any trust.
- (5) The Commission's powers of investment include —
 - (a) power to invest in real or personal property of any kind; and
 - (b) power to be a party to any financial instrument or arrangement that relates to any investment and is, in the opinion of the board of commissioners, for the purpose of managing, limiting or reducing perceived risks or anticipated costs associated with the investment.

[Section 7 amended by No. 49 of 1992 s.28; No. 45 of 1996 s.11; No. 34 of 2002 s.7; No. 42 of 2004 s. 174.]

8. Commission to act efficiently and economically

The Commission shall perform its functions and exercise its powers in an efficient and economic manner and shall use its best endeavours to ensure that its revenue is sufficient to meet its expenditure.

9. Delegation

The board of commissioners, in the name and on behalf of the Commission, may, by instrument in writing approved by resolution, delegate to a commissioner, to a committee of the board of commissioners, or to an officer or employee of the Commission all or any of the powers or duties of the Commission, except this power of delegation.

[Section 9 amended by No. 49 of 1992 s.28.]

10. Directions by Minister

- (1) The Minister may give directions in writing to the Commission with respect to its functions, powers and duties, either generally or with respect to a particular matter, and the Commission shall give effect to those directions.

s. 10B

“**staff**” includes persons whose services are used under section 13.

[Section 10A inserted by No. 45 of 1996 s.12.]

10B. Confidential information

- (1) Nothing in this Act entitles the Minister to have information in the possession of the Commission concerning the affairs of the Commission in a form that —
 - (a) discloses the identity and affairs of any person who is or has been a customer of the Commission in the person’s capacity as such a customer; or
 - (b) might enable the identity and affairs of any such person in that capacity to be ascertained.
- (2) Subsection (1) does not apply where disclosure of the information —
 - (a) is required by some other written law; or
 - (b) is authorized by the customer.

- (3) In this section —

“**Commission**” includes the State Government Insurance Office established by the *State Government Insurance Office Act 1938* and the Motor Vehicle Insurance Trust constituted by the *Motor Vehicle (Third Party Insurance) Act 1943*;

“**customer**” means a person who is or may become a current or former insured party of, or a claimant against, the Commission and an agent, broker or attorney appointed or engaged by the Commission.

[Section 10B inserted by No. 45 of 1996 s.12.]

Division 3 — Staff of the Commission

11. Managing director

- (1) There shall be an office of managing director of the Commission.

- (2) The managing director shall be the chief executive officer of the Commission and shall, subject to the control of the board, administer the day to day operations of the Commission.
- (3) The managing director shall be appointed by the Governor on the nomination of the Minister.
- (4) Subject to subsections (6) and (7) the managing director shall hold office for such period, not exceeding 5 years, as is specified in the instrument appointing him and is eligible for reappointment.
- (5) Subject to the *Salaries and Allowances Act 1975*, the remuneration and allowances payable to, and the conditions of service of, the managing director shall be such as are determined by the Minister on the recommendation of the Public Service Board³.
- (6) The managing director may resign his office by notice in writing delivered to the Minister.
- (7) The managing director may be removed from office by the Governor for any reason mentioned in clause 2(4) of Schedule 1.
- (8) The Minister may appoint a person to act in place of the managing director during any period when he is absent or unable to carry out his duties.

12. Appointment of staff and consultants

- (1) The Commission may appoint such officers and employees, either full time or part time, as the board considers necessary to enable the Commission and the Corporation to carry out their respective functions.
- (2) Subject to any relevant order, award or agreement under the *Industrial Relations Act 1979*, the Commission may determine the remuneration and other terms and conditions of service of its officers and employees.

s. 12A

- (3) The Commission may from time to time classify the positions to be held by officers and employees of the Commission and define the duties to be performed by the respective holders of those positions.
- (4) The Commission may engage under contract for services such professional and technical or other assistance as considers necessary to enable the Commission and the Corporation to carry out their respective functions.

12A. Status of managing director and officers and employees of Commission

Notwithstanding anything in this Division, to the extent that there is in the case of a person who is appointed under —

- (a) section 11 to be the managing director; or
- (b) section 12 to be an officer or employee of the Commission,

and who is a member of the Senior Executive Service within the meaning of the *Public Service Act 1978*⁴ an inconsistency between this Act and that Act that Act shall prevail.

[Section 12A inserted by No. 113 of 1987 s.32.]

13. Use of staff and facilities of departments and instrumentalities

- (1) The Commission may, by arrangement made between the board of commissioners and the Minister concerned, and on such terms and conditions as may be mutually arranged with that Minister and, if appropriate, with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full-time or part-time, of —
 - (a) the services of any officer or employee employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in the right of the State; or

- (b) any facilities of a department of the Public Service of the State or of a State instrumentality.
- (2) Any such arrangement shall provide for an agreed amount by way of payment for the use of the services or facilities.

[Section 13 amended by No. 32 of 1994 s.19.]

13A. Use of staff and facilities of an insurer

The Commission may arrange to make use, either full-time or part-time, of —

- (a) the services of any employee of an insurer; or
- (b) any services or facilities of an insurer,

on such terms and conditions (including payment) as may be mutually arranged by the board of commissioners with that insurer.

[Section 13A inserted by No. 49 of 1992 s.28.]

14. Superannuation

- (1) The Commission may grant, or make provision for the grant of, pensions, gratuities and retirement benefits to its officers and employees and, for that purpose may establish, manage and control, or enter into an arrangement with an insurer or other person for the establishment, management and control by that insurer or other person either alone or jointly with the Commission of, any fund or scheme for the purpose of providing for such pensions, gratuities and benefits.
- (2) The Commission may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) “**officers and employees**” includes —
 - (a) dependants of officers and employees; and
 - (b) former officers and employees and their dependants.

[Section 14 amended by No. 49 of 1992 s.28.]

Division 3A — Strategic development plan and statement of corporate intent

[Heading inserted by No. 28 of 2006 s. 425.]

14A. Duty to observe policy instruments

The Commission is to perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

[Section 14A inserted by No. 28 of 2006 s. 425.]

14B. Strategic development plan and statement of corporate intent

- (1) The board of commissioners must, at the prescribed times, prepare and submit to the Minister —
 - (a) a strategic development plan for the Commission; and
 - (b) a statement of corporate intent for the Commission.
- (2) The regulations may make provision for the following —
 - (a) the manner and form in which the board of commissioners is to prepare, submit, revise or modify a strategic development plan or statement of corporate intent;
 - (b) the period a strategic development plan or statement of corporate intent is to cover;
 - (c) the matters to be set out in a strategic development plan or statement of corporate intent;
 - (d) the functions of the board of commissioners, the Minister and the Treasurer in relation to the development, approval or modification of a strategic development plan or statement of corporate intent;
 - (e) the operation of a strategic development plan or statement of corporate intent.

- (3) If a regulation referred to in subsection (2) enables the Minister to give directions to the board of commissioners, the Minister must cause a copy of a direction given under the regulation to be laid before each House of Parliament or be dealt with in accordance with section 14C —
- (a) within 14 days after the direction is given; or
 - (b) if the direction is the subject of a notice under section 17 of the *Statutory Corporations (Liability of Directors) Act 1996*, within 14 days after it is confirmed under that section.
- (4) Regulations referred to in subsection (2) are not to be made except with the Treasurer's concurrence.

[Section 14B inserted by No. 28 of 2006 s. 425.]

14C. Laying directions about strategic development plan or statement of corporate intent before Parliament

- (1) If —
- (a) a House of Parliament is not sitting at the commencement of the applicable period referred to in section 14B(3) in respect of a direction; and
 - (b) the Minister is of the opinion that that House will not sit during that period,
- the Minister is to transmit a copy of the direction to the Clerk of that House.
- (2) A copy of a direction transmitted to the Clerk of a House is to be taken to have been laid before that House.
- (3) The laying of a copy of a direction that is regarded as having occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.
- (4) The text of a direction referred to in section 14B(3) is to be included in the annual report submitted by the accountable

authority of the Commission under section 66 of the *Financial Administration and Audit Act 1985*.

[Section 14C inserted by No. 28 of 2006 s. 425.]

Division 4 — Financial provisions relating to the Commission

Subdivision A — Income, expenditure and property of the Commission

15. Moneys available to the Commission

- (1) Subject to this Act the Commission shall be responsible for managing its own finances.
- (2) The moneys available to the Commission for the purposes of this Act are —
 - (a) moneys from time to time appropriated by Parliament for the purpose;
 - (b) moneys received by the Commission, pursuant to any written law, by way of premiums, charges, fees, interest or payment for services;
 - (c) moneys derived from the disposal of or dealing with real or personal property vested in or acquired by the Commission, or derived as the income of investment by the Commission or otherwise in the exercise of its functions;
 - (d) moneys received from the Corporation by way of dividends;
 - (e) moneys borrowed under this Act, or lent to the Commission under any other written law, or derived from financial accommodation entered into under and subject to this Act;
 - (f) such moneys as may be advanced by the Treasurer in any case where the moneys otherwise standing to the credit of any of the Funds would be insufficient; and
 - (g) any other moneys lawfully received by the Commission.

16. Establishment and composition of Funds

- (1) The Commission shall establish, maintain and administer the following funds, namely —
 - (a) a fund to be called the “Third Party Insurance Fund”;
 - (b) a fund to be called the “Compensation (Miscellaneous Risks) Insurance Fund”;
 - (c) a fund to be called the “Compensation (Industrial Diseases) Fund”;
 - (d) a fund to be called the “Government Insurance Fund”;
and
 - (e) a fund to be called the “Insurance Commission General Fund”.
- (1a) The Commission may establish, maintain and administer a fund for the purposes of an arrangement managed and administered by the Commission for the insurance and risk management of eligible community organisations.
- (2) The Third Party Insurance Fund shall consist of —
 - (a) moneys appropriated for, or derived from or in connection with, the Commission’s functions under section 6(a) or its functions under section 6(e) in so far as they relate to personal injury and accidental death;
 - (b) other property received or acquired by the Commission in connection with the Commission’s functions referred to in paragraph (a); and
 - (c) moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission’s functions referred to in paragraph (a) and for that purpose only.
- (3) The Compensation (Miscellaneous Risks) Fund shall consist of —

- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(b)(i);
- (b) other property received or acquired by the Commission in connection with the Commission's functions under section 6(b)(i); and
- (c) moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions under section 6(b)(i) and for that purpose only.

- (4) The Compensation (Industrial Diseases) Fund shall consist of —
- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(b)(ii) or its functions under section 6(e) in so far as they relate to industrial diseases;
 - (b) other property received or acquired by the Commission in connection with the Commission's functions referred to in paragraph (a); and
 - (c) moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions referred to in paragraph (a) and for that purpose only.

- (5) The Government Insurance Fund shall consist of —
- (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(c) other than moneys in a fund established under section 7(4)(a) or the subject of a trust of which the Commission is a trustee under section 7(4)(c);
 - (b) other property received or acquired by the Commission in connection with the Commission's functions under section 6(c); and

- (c) moneys or other property credited, apportioned or transferred to that Fund by the Commission under section 17 or 18,

and, subject to section 18, may be applied for the purpose of carrying out the Commission's functions under section 6(c) and for that purpose only.

- (5a) A fund established under subsection (1a) shall consist of —
 - (a) moneys appropriated for, or derived from or in connection with, the Commission's functions under section 6(ca), other than moneys that are the subject of a trust of which the Commission is a trustee under section 7(4)(c);
 - (b) other property received or acquired by the Commission in connection with the Commission's functions under section 6(ca); and
 - (c) moneys or other property credited, apportioned or transferred to the fund by the Commission under section 17 or 18.

- (6) The Insurance Commission General Fund shall consist of —
 - (a) moneys available to the Commission that are not required to be credited to any other Commission account;
 - (b) other property of the Commission that does not form part of any other Commission account; and
 - (c) any moneys or other property credited, apportioned or transferred to that Fund under section 17 or 18,

and, subject to section 18 may be applied for the purpose of carrying out the functions of the Commission under section 6(d), (f) and (h), and for the general administration of this Act, and for those purposes only.

- (7) An account or accounts shall be maintained at the Treasury, forming part of the Trust Fund constituted under section 9 of the

Financial Administration and Audit Act 1985, or in a bank or banks approved by the Treasurer under section 7(2)(c) in respect of each Fund.

- (8) One account may be maintained under subsection (7) in respect of 2 or more Funds.

[Section 16 amended by No. 49 of 1996 s.64; No. 45 of 1996 s.15; No. 34 of 2002 s.8.]

17. Apportionment of income, expenditure and assets

- (1) Where money received or receivable or expenditure incurred by the Commission relates to the Commission's operations in relation to 2 or more Funds the receipts or payments in respect of that income or expenditure shall be apportioned by the Commission to the relevant Funds in such proportions as the board of commissioners thinks fit.
- (2) Where property (other than money) received or acquired by the Commission relates to the Commission's operations in relation to 2 or more Funds the value of that property shall be apportioned by the Commission to the relevant Funds in such proportions as the board of commissioners thinks fit.
- (3) Where moneys are appropriated by Parliament for the purposes of functions of the Commission, those moneys shall, subject to the terms of the appropriation Act, be credited by the Commission —
- (a) to such Commission account; or
 - (b) to such Commission accounts in such proportions,
- as the board of commissioners thinks fit.

[Section 17 amended by No. 45 of 1996 s.16.]

18. Transfer between Funds

- (1) The Commission may temporarily transfer moneys or other property from one Fund to another Fund subject to appropriate adjustments being made at intervals not exceeding 12 months.

- (2) Where the financial statements prepared under the *Financial Administration and Audit Act 1985* in respect of the Third Party Insurance Fund, the Government Insurance Fund, the Insurance Commission General Fund or a fund established under section 16(1a) indicate that there is a surplus in that Fund the Commission, with the approval of the Treasurer, may transfer the amount, or a portion of the amount, of that surplus to —
- (a) another of the Funds;
 - (b) the Consolidated Fund; or
 - (c) any other fund or account.
- (3) The Commission may transfer moneys from the Compensation (Industrial Diseases) Fund to the Insurance Commission General Fund to meet or assist in meeting any amounts required to be expended by the Commission under paragraph 6 of Schedule 2 to the *Mine Workers' Relief Act 1932*.
- (4) Subject to this section no moneys or other property shall be transferred from a Fund to another Fund.
- (5) In this section “**surplus**” means any amount standing to the credit of a Fund which, in the opinion of the Treasurer, is in excess of that required as adequate provision for actual and contingent liabilities and the operating and other expenses of the Fund.

[Section 18 amended by No. 6 of 1993 s.11; No. 34 of 2002 s.9.]

Subdivision Aa — Investment and property management

[Heading inserted by No. 45 of 1996 s.17.]

19. Arrangements for appointment of investment managers

- (1) The Commission may, with the written approval of the Treasurer, arrange for a person to invest or manage moneys or other property under the control of the Commission on such terms and conditions (including payment) as may be mutually arranged by the board of commissioners with that person.

- (2) The Commission is not to make an arrangement with a person under subsection (1) unless the board of commissioners considers that the person is suitably qualified to perform the functions required under the arrangement.
- (3) The Commission is to ensure that expressions of interest are invited from persons who are believed by the board of commissioners to be suitably qualified before an arrangement is made under subsection (1).

[Section 19 inserted by No. 45 of 1996 s.17.]

19A. Investment policy

- (1) A person performing a function relating to the investment or management of moneys or other property under the control of the Commission shall observe such prudential requirements as to investment policy as the Treasurer may impose.
- (2) Subsection (1) applies to —
 - (a) the Commission performing its functions under section 6(g); and
 - (b) a person performing a function under an arrangement under section 19(1).

[Section 19A inserted by No. 45 of 1996 s.17.]

Subdivision B — Financial administration, audit and reporting

20. Application of *Financial Administration and Audit Act 1985* to the Commission

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

21. Provisions and reserves

The Commission may, in its accounting records, establish and operate provisions for actual and contingent liabilities, reserve accounts and reserve funds for such purposes and within such limits as the Treasurer approves.

22. Accounts

The Commission shall cause separate and distinct accounts to be kept and maintained under the *Financial Administration and Audit Act 1985* in respect of each Commission account.

[Section 22 amended by No. 45 of 1996 s.18.]

23. Annual reports, financial statements

The Commission shall, if so directed by the Treasurer —

- (a) cause a separate and distinct annual report to be prepared and submitted under section 66(1) of the *Financial Administration and Audit Act 1985*, in respect of a Commission account; or
- (b) cause separate and distinct financial statements referred to in section 66(1)(a) of the *Financial Administration and Audit Act 1985* to be prepared in respect of a Commission account for inclusion in the Commission's annual report under section 66(1) of that Act.

[Section 23 inserted by No. 45 of 1996 s.19.]

Subdivision C — Borrowing and financial accommodation

24. Power to borrow etc., generally

- (1) Subject to this Act, the Commission may, with the approval of the Treasurer —
 - (a) borrow, or re-borrow, moneys;
 - (b) obtain credit; or

- (c) arrange for financial accommodation to be extended to the Commission in ways additional to or other than borrowing moneys or obtaining credit,

for the purpose of performing its functions.

- (2) Any moneys borrowed by, credit obtained by, or financial accommodation extended to the Commission under this section may be raised or entered into, either in Australia or elsewhere, as one loan or transaction or as several loans or transactions.

25. Power to make provision to pay off loans

For the purpose of making provision to pay off either the whole or any part of the moneys comprised in a loan raised by the Commission, the Commission may, with the approval of the Treasurer, convert or re-negotiate that loan or otherwise borrow moneys in accordance with this Act before the loan or that part of it becomes repayable.

26. Borrowing power, from Treasury sources

The Commission may borrow from the Treasurer such amounts as the Treasurer approves, on such conditions as to repayment, payment of interest or any other matter, as the Treasurer imposes.

27. Specific State guarantees

- (1) The Treasurer on behalf of the State may guarantee the performance by the Commission, in the State or elsewhere, of any obligation of the Commission, however or wherever arising, entered into or to be entered into by the Commission.
- (2) An instrument of guarantee given pursuant to subsection (1) shall be executed by —
 - (a) the Treasurer; or
 - (b) a person authorized —
 - (i) by the Treasurer in writing; or

- (ii) by operation of law.
- (3) The liability of the State pursuant to a guarantee under this section shall not be affected or discharged by the granting to the Commission of any time or other indulgence or consideration, or by reason of any transaction that may take place between the Commission and any person having the benefit of the guarantee, or by any other act or omission of the person having the benefit of the guarantee, whereby the liability of the State as guarantor would but for this provision have been affected or discharged.
- (4) The due performance of a guarantee given by the Treasurer on behalf of the State under the authority of this Act is hereby authorized, and the due payment of moneys payable thereunder with all interest thereon shall be charged to the Consolidated Fund which is hereby to the extent necessary appropriated accordingly, and any sums received or recovered by the Treasurer from the Commission or otherwise in respect of payment so charged shall be credited to the Consolidated Fund.
- (5) By virtue of this subsection any sum paid by the Treasurer under any guarantee given by him on behalf of the State under this Act, and any obligation of the Commission arising pursuant to an advance made under section 26 constitutes a floating charge upon the revenue and assets of the Commission, and such revenue and those assets are charged with the performance and observance by the Commission of the terms and the conditions which the Treasurer may have imposed or approved in relation to that guarantee or that advance.

[Section 27 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

Part III — State Government Insurance Corporation

Division 1 — Establishment of the Corporation

28. State Government Insurance Corporation established as a body corporate

- (1) There is hereby established a body to be called the State Government Insurance Corporation.
- (2) The Corporation is a body corporate with perpetual succession and a common seal and is capable of —
 - (a) acquiring, holding, managing, leasing and disposing of real and personal property;
 - (b) suing and being sued; and
 - (c) doing and suffering all such acts and things as corporations may lawfully do and suffer.
- (3) The Corporation is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown except as otherwise prescribed.
- (4) The Corporation is not, and shall not become, part of the Public Service under the *Public Service Act 1978*⁴.
- (5) Notwithstanding subsection (1), the Corporation may use and operate under a trading name approved by the Minister being —
 - (a) an abbreviation or adaptation of its corporate name;
 - (b) a name other than its corporate name.
- (6) After the commencement of Part 3 of the *SGIO Privatisation Act 1992*⁵ the Corporation is not to use the trading name “SGIO”, or a trading name that includes “SGIO”, except by agreement with SGIO Insurance Limited and in accordance with the terms of any such agreement.

[Section 28 amended by No. 49 of 1992 s.28.]

29. Board of directors

- (1) The Corporation shall have a board of directors comprising —
 - (a) the managing director who shall be a director and the chairman of the board *ex officio*; and
 - (b) not less than 2 nor more than 4 other persons appointed as directors by the Commission.
- (2) One of the directors referred to in subsection (1)(b) shall be appointed by the Commission to be deputy chairman of the board of directors.
- (3) The board of directors is the governing body of the Corporation with authority, in the name of the Corporation, to exercise and perform the powers, functions and duties conferred or imposed on the Corporation under this Act.
- (4) Schedule 2 shall have effect with respect to the board of directors and the directors of the Corporation and with respect to the acts, proceedings and determinations of the board of directors.
- (5) A director of the Corporation referred to in subsection (1)(b) shall be paid out of the funds of the Corporation such remuneration and travelling and other allowances as are determined in the case of that director by the Minister on the recommendation of the Commission.

Division 2 — Function and powers of the Corporation

30. Function and powers

- (1) The function of the Corporation is to manage the existing inwards re-insurance policies and life insurance business of the Corporation and to do anything related to that function.
- (2) Notwithstanding subsection (1), the Corporation may make such arrangements as it thinks fit with such persons as it thinks fit for the disposal of life policies issued by the Corporation or their continuance by another insurer, and for the disposal and

assignment of assets, rights and liabilities relating to those policies.

(3) The Corporation has power to do, in the State or elsewhere, all things necessary or convenient to be done for or in connection with the performance of its function.

(4) Nothing in this section limits section 5 of the *SGIO Privatisation Act 1992*.

(5) In this section —

“**existing**” means existing immediately before the appointed day⁶ under the *SGIO Privatisation Act 1992*;

“**inwards re-insurance policy**” means a policy of re-insurance issued by the Corporation under which the Corporation has re-insured the liability or risk of another person under a policy of insurance and includes any liability or risk identified immediately before the appointed day in the inwards re-insurance account of the Corporation;

“**life policy**” has the same meaning as it has in the *Life Insurance Act 1945*² of the Commonwealth, and also means approved deposit funds, annuities and other superannuation policies.

[Section 30 inserted by No. 49 of 1992 s.28.]

[31, 32 and 33. Repealed by No. 49 of 1992 s.28.]

34. Liability in respect or in lieu of taxation

(1) Notwithstanding any exemption or immunity that may otherwise exist, the Corporation shall be liable for and shall pay all local government rates and charges and all land tax, metropolitan region improvement tax, water rates, pay-roll tax, stamp duties, and all other taxes, fees and charges imposed by the Government, its instrumentalities or agencies.

[(2), (3) and (4) repealed]

[Section 34 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64; No. 55 of 1996 s.10(1).]

35. Delegation

The board of directors, in the name and on behalf of the Corporation, may, by instrument in writing approved by resolution, delegate to a director of the Corporation, to an officer or employee of the Commission or to an agent, broker or attorney appointed or engaged by the Corporation, all or any of the powers or duties of the Corporation, except this power of delegation.

36. Directions by the Commission

- (1) The Commission may give directions in writing to the Corporation with respect to its function, powers and duties, either generally or with respect to a particular matter, and the Corporation shall give effect to those directions.
- (2) The text of any direction received by the Corporation under subsection (1) shall be included in the annual report submitted by the accountable authority of the Corporation under section 66 of the *Financial Administration and Audit Act 1985*.

[Section 36 amended by No. 50 of 1989 s.18.]

Division 3 — Staff of the Corporation

37. Classification, employment conditions, and duties of staff allocated to the Corporation

The Commission may have regard to recommendations made by the Corporation when —

- (a) determining, under section 12(2), the remuneration and other terms and conditions of service of;
- (b) classifying, under section 12(3), the positions to be held by; or
- (c) defining, under section 12(3), the duties of,

the officers and employees of the Commission employed in the service of the Corporation.

38. Use of services and facilities of the Commission, departments and instrumentalities

- (1) Subject to subsection (2), the Corporation may, by arrangement made between the board of directors and the Minister concerned, and on such terms and conditions as may be mutually arranged with that Minister and with the relevant employing authority within the meaning of the *Public Sector Management Act 1994*, make use, either full-time or part-time, of —
 - (a) the services of any officer or employee employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in right of the State; or
 - (b) any services or facilities of a department of the Public Service of the State or of a State instrumentality.

[(2) and (3) repealed]

[Section 38 amended by No. 49 of 1992 s.28; No. 32 of 1994 s.19.]

Division 4 — Financial provisions relating to the Corporation

39. Capital of the Corporation

- (1) The authorized capital of the Corporation shall be \$40 000 000 divided into 400 000 shares of \$100 each.
- (2) The Governor may on the recommendation of the Commission by regulation increase the authorized capital of the Corporation.
- (3) The Commission shall take up 200 000 shares in the authorized capital of the Corporation at par as soon as is practicable after the commencement of this section, and those shares shall be paid for out of moneys standing to the credit of the Insurance Commission General Fund.

- (4) Further shares in the authorized capital of the Corporation may from time to time be issued by the Corporation and taken up —
 - (a) by the Treasurer, with moneys appropriated by Parliament for the purpose;
 - (b) by the Commission; or
 - (c) with the approval of the Treasurer, by any other statutory authority.
- (5) In issuing further shares under subsection (4) the Corporation shall give preference to existing holders of shares in the Corporation and shall ensure that subsection (6) is not contravened.
- (6) The Commission shall at all times hold not less than 50% of all the shares in the Corporation that have been taken up.
- (7) Subject to subsection (10), a statutory authority is authorized by virtue of this subsection to acquire and hold shares in the Corporation notwithstanding any enactment to the contrary.
- (8) The amount to be paid for shares taken up under subsection (4) may, if the board of directors so determines, include a payment by way of premium, which the Corporation may receive and apply in such manner as the Treasurer may approve.
- (9) A holder of shares in the Corporation —
 - (a) is liable only to the extent of any amount unpaid on the shares held by that shareholder;
 - (b) is entitled to receive any dividend declared by the board of directors in respect of those shares; and
 - (c) subject to subsection (6) in the case of the Commission, may, by instrument executed by the transferor and the transferee and delivered to the Corporation, transfer shares to another person or body authorized by subsection (4) to take up shares in the Corporation.
- (10) Notwithstanding anything in this section, no statutory authority referred to in subsection (4)(c) shall, without the prior approval

of the Treasurer, acquire or hold shares in the Corporation, whether under subsection (4) or (9)(c), in excess of such limit as may be prescribed.

- (11) The Corporation shall keep a register of the holders of its shares, in such form as the Treasurer may approve, and enter in the register such details as the Treasurer may require.

[Section 39 amended by No. 49 of 1996 s.64.]

40. Temporary investment of funds

Moneys standing to the credit of the Corporation may until required for the purpose of carrying out its function under this Act, be temporarily invested or dealt with by the Corporation in such manner as the board of directors thinks fit.

41. Application of *Financial Administration and Audit Act 1985* to the Corporation

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Corporation and its operations.

Part IV — General

42. Secrecy

- (1) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a function or duty under or in connection with this or any other written law or as required by any other legal duty —
- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Act; or
 - (b) produce to any person any document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2 500.

- (2) This section applies to every person who —
- (a) is or has been a commissioner or alternate commissioner;
 - (b) is or has been a director or alternate director of the Corporation;
 - (c) is or has been an officer or employee of the Commission; or
 - (d) is rendering or has rendered services to the Commission or Corporation under section 12, 13, 13A or 38.

[Section 42 amended by No. 49 of 1992 s.28.]

43. Execution of documents and entry into contracts

- (1) A document is duly executed by the Commission if —
- (a) it is sealed with the seal of the Commission in accordance with the regulations; or
 - (b) it is executed on behalf of the commission by a person empowered to do so under subsection (4).

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- (2) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.
- (3) Where a document is produced bearing a seal purporting to be the common seal of the Commission it shall be presumed that the seal is the common seal of the Commission until the contrary is shown.
- (4) The Commission may, by writing under its common seal, empower a commissioner, officer, employee or other person, either generally or in respect of a specified matter, or specified matters, to execute deeds on its behalf, and a deed executed by such a person on behalf of the Commission binds the Commission and has the same effect as if it were under the common seal of the Commission.
- (5) The authority of a person empowered by the Commission under subsection (4) shall be deemed as between the Commission and a person dealing with him, to have continued during the period (if any) specified in the instrument conferring his authority or, if no period is so specified, until notice of the revocation or termination of his authority was given to the person dealing with him.
- (6) Insofar as the formalities of making, varying or discharging a contract are concerned a person acting under the express or implied authority of the Commission may make, vary or discharge a contract in the name of or on behalf of the Commission in the same manner as if the Commission were a natural person.
- (7) The making, varying or discharging of a contract in accordance with subsection (6) is effectual in law and binds the Commission and other parties to the contract.
- (8) Subsection (6) does not prevent the Commission from making, varying or discharging a contract under its common seal.

- (9) Subsections (1) to (8) shall also apply to and in relation to the Corporation as if references in those subsections to the Commission were references to the Corporation and the reference in subsection (4) to a commissioner were a reference to a director of the Corporation.

44. Exemption of certain public authorities from workers' compensation insurance requirements

For the purposes of any enactment other than sections 165, 166 and 168 of the *Workers' Compensation and Injury Management Act 1981* (the "WCR Act"), public authorities for which insurance arrangements are managed and administered by the Commission under section 6(c) of this Act, are to be regarded as a group of employers that have been exempted by the Governor under section 164 of the WCR Act from the obligation to insure pursuant to the WCR Act except for the obligation to insure against liability to pay compensation for any industrial disease of the kinds referred to in section 151(a)(iii) of the WCR Act.

[Section 44 inserted by No. 45 of 1996 s.23; amended by No. 42 of 2004 s. 174.]

45. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1) regulations may make provision as to —
- (a) the use of the common seals of the Commission and the Corporation in Western Australia and elsewhere;
 - (b) the application to the Corporation, the directors of the Corporation, or the officers and employees employed in the service of the Corporation, either with or without modification or variation, of any written law which would not otherwise be binding on the Corporation, the

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directors of the Corporation, or those officers and employees; and

- (c) the requirements and procedures which are to be observed or followed in, or in relation to, borrowing by the Corporation and the issue and recording of debt paper.

Part V — Repeal, amendments, saving, validation and transitional

46. Repeal and amendments

- (1) The *State Government Insurance Office Act 1938* is hereby repealed.

[(2) Omitted under the Reprints Act 1984 s.7(4)(e).]

47. Saving, validation and transitional provisions

Schedule 4 shall have effect.

48. Oversight by Public Accounts Committee

- (1) The Public Accounts Committee, for the time being, of the Legislative Assembly shall oversee the conduct and management of the affairs of the Commission and the Corporation to the extent necessary to determine and report whether the Commission and the Corporation receive any improper or unfair advantage or preference over their competitors in the insurance industry.
- (2) The Terms of Reference of the Public Accounts Committee in relation to its function under subsection (1) shall be as agreed to by both Houses of Parliament.

Schedule 1

[Section 5(4)]

Provisions as to Commissioners

1. Definitions

In this Schedule —

“**ordinary commissioner**” means a commissioner other than the managing director, and includes the chairman and the deputy chairman of the board of commissioners;

“**the board**” means the board of commissioners of the Commission.

2. Commissioners — terms and vacation of office

- (1) Subject to subclauses (2), (3) and (4), an ordinary commissioner shall hold office for such period, not exceeding 3 years, as is specified in the instrument appointing him as a commissioner, and is eligible for reappointment.
- (2) An ordinary commissioner, unless he sooner resigns or is removed from office, shall continue in office until his successor comes into office, notwithstanding that the period for which he was appointed may have expired.
- (3) An ordinary commissioner may resign his office by notice in writing delivered to the Minister.
- (4) An ordinary commissioner may be removed from office by the Governor —
 - (a) for mental or physical disability, incompetence, neglect of duty or misconduct proved to the satisfaction of the Governor;
 - (b) if he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
 - (c) if he is absent without leave of the board from 3 consecutive meetings of the board of which he has had notice.
- (5) An ordinary commissioner shall carry out his duties on a part-time basis unless there is any requirement to the contrary in the instrument

appointing him as a commissioner or as chairman or deputy chairman of the board.

3. Alternate commissioners

- (1) Where an ordinary commissioner, is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his place, and while so acting according to the tenor of his appointment that other person is deemed to be a commissioner.
- (2) Except where there is a person acting in his place pursuant to section 11(8), the managing director may, in writing delivered to the chairman of the board, nominate a senior officer of the Commission to represent him at any meeting of the board which he is unable to attend by reason of sickness, absence or other cause, and while so attending the person so nominated is deemed to be a commissioner.
- (3) No act or omission of a person acting in place of another under this clause shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

4. Chairman and deputy chairman — term and vacation of office

- (1) Subject to subclauses (2) and (3) the chairman or deputy chairman of the board shall hold office as chairman or deputy chairman for such period not exceeding 3 years as is specified in the instrument appointing him as chairman or deputy chairman, as the case may be, and is eligible for reappointment.
- (2) The office of the chairman or deputy chairman of the board becomes vacant if he ceases to be a commissioner.
- (3) The chairman or deputy chairman of the board may resign his office as chairman or deputy chairman by notice in writing delivered to the Minister.

5. Disclosure of pecuniary interests

- (1) A commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the board shall, as soon as possible after the relevant facts have come to his

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knowledge, disclose the nature of his interest at a meeting of the board.

- (2) A disclosure under subclause (1) shall be recorded in the minutes of the meeting of the board and the commissioner shall not, unless the board otherwise determines —
 - (a) be present during any deliberation of the board with respect to that matter; or
 - (b) take part in any decision of the board with respect to that matter.
- (3) For the purpose of the making of a determination by the board under subclause (2) in relation to a commissioner who has made a disclosure under subclause (1), a commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not —
 - (a) be present during any deliberation of the board for the purpose of making the determination; or
 - (b) take part in the making by the board of the determination.

6. Meetings

- (1) The first meeting of the board shall be convened by the chairman of the board and thereafter, subject to subclause (2), meetings shall be held at such times and places as the board determines.
- (2) A special meeting of the board may at any time be convened by the chairman of the board.
- (3) The chairman of the board shall preside at all meetings of the board at which he is present.
- (4) If the chairman of the board is absent from a meeting the deputy chairman of the board shall, if present, preside at the meeting.
- (5) If the chairman and the deputy chairman of the board are both absent from a meeting the commissioners present shall appoint one of their number to preside.
- (6) At any meeting of the board 3 commissioners constitute a quorum.

- (7) At any meeting of the board the person presiding shall have a deliberative vote, and in the case of an equality of votes, shall also have a casting vote.

6A. Telephone and video meetings

Despite anything in this Schedule, a communication between commissioners constituting a quorum under clause 6(6) by telephone or audio-visual means is a valid meeting of the board, but only if each participating commissioner is capable of communicating with every other participating commissioner instantaneously at all times during the proceedings.

7. Committees

- (1) The board may from time to time, by resolution, appoint committees of such commissioners, or such commissioners and other persons, as it thinks fit and may discharge, alter, continue or reconstitute any committee so appointed.
- (2) Subject to the directions of the board and to the terms of any delegation under section 9, each committee may determine its own procedures.
- (3) Clause 6A applies, with such modifications as are necessary, in relation to a committee.

8. Resolution may be passed without meeting

- (1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all commissioners and is assented to by not less than 3 commissioners that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board.
- (2) For the purposes of subclause (1) —
- (a) the meeting is to be taken as having been held —
 - (i) if the commissioners assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a commissioner; or

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- (ii) if the commissioners assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a commissioner;
 - (b) 2 or more separate documents in identical terms each of which is assented to by one or more commissioners are to be taken to constitute one document; and
 - (c) a commissioner may signify assent to a document by signing the document or by notifying the Commission of the commissioner's assent in person or by post, facsimile transmission, telephone or other method of written, audio or audio-visual communication.
- (3) Where a commissioner signifies assent to a document otherwise than by signing the document, the commissioner must by way of confirmation sign the document at the next meeting of the board attended by that commissioner, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

8A. Minutes of meetings etc.

The board is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 8.

9. Leave of absence

The board may grant leave of absence to a commissioner on such terms and conditions as it thinks fit.

10. Board to determine own procedures

Subject to this Act, the board shall determine its own procedures.

11. Protection of commissioners

- (1) A commissioner is not personally liable for any act done or omitted to be done in good faith by the Commission, the board, a committee of the board or a delegate of the Commission or by him acting as a commissioner.

- (2) Subclause (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.

[Schedule 1 amended by No. 41 of 1996 s.3; No. 45 of 1996 s.26.]

Schedule 2

Schedule 2

[Section 29(4)]

Provisions as to directors

1. Definition

In this Schedule “**ordinary director**” means a director of the Corporation other than the managing director, and includes the deputy chairman of the board of directors.

2. Directors — terms and vacation of office

- (1) Subject to subclauses (2), (3) and (4), an ordinary director shall hold office for such period, not exceeding 5 years, as is specified in the instrument appointing him as a director, and is eligible for reappointment.
- (2) An ordinary director, unless he sooner resigns or is removed from office, shall continue in office until his successor comes into office, notwithstanding that the period for which he was appointed may have expired.
- (3) An ordinary director may resign his office by notice in writing delivered to the chairman of the board of commissioners.
- (4) An ordinary director may be removed from office by the Commission —
 - (a) for mental or physical disability, incompetence, neglect of duty or misconduct proved to the satisfaction of the Commission;
 - (b) if he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
 - (c) if he is absent without leave of the board of directors from 3 consecutive meetings of the board of directors of which he has had notice.
- (5) An ordinary director shall carry out his duties as a director on a part time basis unless there is any requirement to the contrary in the instrument appointing him as a director or as deputy chairman of the board of directors.

3. Alternate directors

- (1) Where an ordinary director, is unable to act by reason of sickness, absence or other cause, the Commission may appoint another person to act temporarily in his place, and while so acting according to the tenor of his appointment that other person is deemed to be a director of the Corporation.
- (2) Except where there is a person acting in his place pursuant to section 11(8), the managing director may, in writing delivered to the deputy chairman of the board of directors, nominate a senior officer of the Commission to represent him at any meeting of the board of directors which he is unable to attend by reason of sickness, absence or other cause, and while so attending the person so nominated is deemed to be a director of the Corporation.
- (3) No act or omission of a person acting in place of another under this clause shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

4. Deputy chairman — term and vacation of office

- (1) Subject to subclauses (2) and (3) the deputy chairman of the board of directors shall hold office as deputy chairman for such period not exceeding 5 years as is specified in the instrument appointing him as deputy chairman and is eligible for reappointment.
- (2) The office of the deputy chairman of the board of directors becomes vacant if he ceases to be a director of the Corporation.
- (3) The deputy chairman of the board of directors may resign his office as deputy chairman by notice in writing delivered to the chairman of the board of commissioners.

5. Meetings

- (1) The first meeting of the board of directors shall be convened by the chairman of the board of directors and thereafter, subject to subclause (2), meetings shall be held at such times and places as the board of directors determines.
- (2) A special meeting of the board of directors may at any time be convened by the chairman of the board of directors.

Schedule 2

- (3) The chairman of the board of directors shall preside at all meetings of the board of directors at which he is present and, if the chairman is absent, the deputy chairman of the board of directors shall preside.
- (4) At any meeting of the board of directors 3 directors, at least one of whom is an office-bearer, constitute a quorum.
- (5) In subclause (4) “**office-bearer**” means the chairman or deputy chairman of the board of directors.
- (6) At any meeting of the board the person presiding shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote.

6. Certain provisions of Schedule 1 to apply

Clauses 5, 8, 9 and 10 of Schedule 1 apply, with any necessary modifications, to and in relation to the board of directors and the directors of the Corporation and with respect to the acts, proceedings and determinations of the board of directors.

[Schedule 3 omitted under the Reprints Act 1984 s.7(4)(e).]

Schedule 4

[Section 47]

Saving, Validation and Transitional Provisions

1. Terms used

In this Schedule, unless the contrary intention appears —

“**assets**” includes funds, rights and property;

“**commencement day**” means the day of commencement of section 46¹;

“**liabilities**” includes debt and obligations;

“**MVIT**” means the Motor Vehicle Insurance Trust constituted by the Third Party Insurance Act;

“**prescribed period**” means the period commencing on 1 July 1986 and ending immediately before the commencement day;

“**SGIO**” means the State Government Insurance Office established by the *State Government Insurance Office Act 1938*⁷;

“**Third Party Insurance Act**” means the *Motor Vehicle (Third Party Insurance) Act 1943*.

2. Transfer of assets, liabilities and records of the MVIT

On the commencement day —

- (a) all assets that were, immediately before that day, vested in, under the control of, or standing to the credit of the MVIT (including the Motor Vehicle Insurance Fund but excluding the moneys in the Premium Surcharge Account kept under section 3P(4a) of the Third Party Insurance Act) are, by force of this clause, vested in the Commission;
- (b) the Commission becomes, by force of this clause, liable to pay, bear or discharge all the liabilities of the MVIT that existed immediately before that day; and
- (c) the Commission shall take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the MVIT.

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3. MVIT insurance policies

Without limiting the generality of clause 4(1), on and from the commencement day any policy of insurance issued under the Third Party Insurance Act in force immediately before that day shall be deemed to be, and, subject to that Act and the terms and conditions of the policy, shall continue to have effect as if it were, a policy issued by the Commission under that Act.

4. Agreements, instruments, determinations and proceedings generally

- (1) Any agreement or instrument subsisting immediately before the commencement day to which the MVIT was a party has effect on and after that day as if—
 - (a) the Commission were substituted for the MVIT as a party to the agreement or instrument; and
 - (b) any reference in the agreement or instrument to the MVIT were (unless the context otherwise requires) a reference to the Commission.
- (2) Any determination of the MVIT made under or for the purposes of the Third Party Insurance Act and subsisting immediately before the commencement day has effect on and from that day as if it were a determination made by the Commission.
- (3) Where anything has been lawfully commenced by or under the authority of the MVIT before the commencement day that thing may be carried on and completed by or under the authority of the Commission.
- (4) Without limiting the generality of subclause (3), any proceedings, pending immediately before the commencement day to which the MVIT was a party may be continued on or after that day as if the Commission were a party thereto in lieu of the MVIT.

5. Final reports on the operations of the MVIT

- (1) If sections 3QA and 3QB of the Third Party Insurance Act (as applied by section 4 of the *Acts Amendment (Financial Administration and Audit) Act 1985*) have not been complied with before the commencement day in respect of the year ending on 30 June 1986, the

MVIT, the auditor of the MVIT and the Minister to whom the Administration of the Third Party Insurance Act is committed shall comply with those sections (as so applied) in respect of that year as soon as practicable after the commencement day.

- (2) As soon practicable after the commencement day the MVIT shall cause sections 66, 67 and 68 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the MVIT in respect of the prescribed period, and a report prepared under this subclause shall be deemed to be an annual report for the purposes of section 69 of that Act.
- (3) Notwithstanding section 46(2) and Schedule 3, the MVIT as constituted immediately before the commencement day shall continue in existence for the purposes of subclauses (1) and (2).
- (4) The Commission shall provide such clerical and other assistance as is reasonably required for the purposes of subclauses (1) and (2).

6. Assessment as to sufficiency of income

If the MVIT has complied with subsection (1) of section 3T of the Third Party Insurance Act at least once during the prescribed period, the Commission is not obliged to comply with that subsection until the financial year beginning on 1 July 1987.

7. Employment of current officers

- (1) A person who was, immediately before the commencement day, an employee of the MVIT shall be entitled to be employed pursuant to this Act with remuneration corresponding with or higher than that which he received immediately before the commencement day.
- (2) A person who becomes an officer or employee of the Commission pursuant to subclause (1) is entitled to retain his existing and accruing rights (including any rights in relation to retirement benefits) and for the purpose of determining such rights his service with the Commission shall be regarded as continuous with his service with the MVIT.

Schedule 4

8. References to the MVIT in laws

References to the MVIT in a written law, other than this Act or an Act amended by section 46(2) and Schedule 3, shall, unless because of the context it would be inappropriate so to do, be read and construed as references to the Commission.

9. Transfer of assets, liabilities and records of the SGIO

On the commencement day —

- (a) all assets that were, immediately before that day, vested in, under the control of, or standing to the credit of the SGIO (including the Trading Fund, the Life Insurance Fund and the Government Insurance Fund) are, by force of this clause, vested in the Commission;
- (b) the Commission becomes, by force of this clause, liable to pay, bear or discharge all the liabilities of the SGIO that existed immediately before that day; and
- (c) the Commission shall take delivery of all registers, papers, documents, minutes, receipts, books of account and other records (however compiled, recorded or stored) relating to the operations of the SGIO.

10. SGIO insurance policies and re-insurance

(1) In this clause —

“existing policy” means a policy of insurance subsisting immediately before the commencement day being a policy that was issued by the SGIO or a policy under which the SGIO had undertaken liability;

“existing re-insurance policy” means a policy of re-insurance subsisting immediately before the commencement day being a policy that was issued by another insurer and under which the SGIO was re-insured in respect of a liability or risk.

(2) On and after the commencement day —

- (a) any existing policy that relates to the Commission’s functions under section 6(b), (c), or (g) is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy issued by the Commission;

- (b) any existing policy that relates to the Corporation's function under section 30 is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy issued by the Corporation.
- (3) Any doubt or dispute as to whether an existing policy is one to which subclause (2)(a) applies or is one to which subclause (2)(b) applies shall be resolved by determination of the Minister and the Minister's determination on the matter shall be final and not subject to appeal, review or challenge in any way.
- (4) On or as soon as practicable after the commencement day, the Commission shall, in respect of each existing policy referred to in subclause (2)(b), transfer to the Corporation, out of the assets vested in the Commission under clause 9(a), an amount that bears the same proportion to the current premium for that policy as the unexpired portion of the current term of that policy bears to the whole of that term.
- (5) Subject to subsections (4) and (5) of section 161 of the *Workers' Compensation and Assistance Act 1981*⁸, the approval of the SGIO granted by the Minister under that section current immediately before the commencement day shall subsist in favour of the Corporation in respect of existing policies referred to in subclause (2)(b) and in that respect only.
- (6) On and after the commencement day —
 - (a) any existing re-insurance policy that relates to the Commission's functions under section 6(b), (c), or (g) is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy that re-insures the Commission;
 - (b) any existing re-insurance policy that relates to the Corporation's function under section 30 is deemed to be, and, subject to the terms and conditions of the policy, continues to have effect as if it were, a policy that re-insures the Corporation.
- (7) Any doubt or dispute as to whether an existing re-insurance policy is one to which subclause (6)(a) applies or is one to which subclause (6)(b) applies shall be resolved by determination of the Minister and the Minister's determination on the matter shall be final and not subject to appeal, review or challenge in any way.

Schedule 4

11. Agents and brokers

- (1) Where any person has been appointed as an agent by the SGIO —
- (a) that appointment;
 - (b) the terms and conditions of the agreement or instrument (if any) by which that appointment was made; and
 - (c) any act or thing done by or in relation to that person whilst he was acting under that appointment,

is, and shall be deemed to have always been, as valid and effectual as it would have been if, when the appointment was made, the SGIO had had the power conferred on the Commission by section 7(2)(j) and on the Corporation by section 31(2)(k)⁹.

- (2) Where any person is acting under an appointment referred to in subclause (1) immediately before the commencement day that appointment and the terms and conditions of the agreement or instrument by which that appointment was made have effect on and after that day as if the appointment were 2 separate and distinct appointments —
- (a) one appointing the person as an agent of the Commission; and
 - (b) the other appointing the person as an agent of the Corporation.
- (3) An agreement between the SGIO and an insurance broker subsisting immediately before the commencement day has effect on and after that day as if it were 2 separate and distinct agreements —
- (a) one between the Commission and the broker; and
 - (b) the other between the Corporation and the broker.

12. Agreements, instruments and proceedings generally

- (1) Unless clause 10 or 11 or an order under subclause (4) applies, any agreement or instrument subsisting immediately before the commencement day to which the SGIO was a party, has effect on and after that day as if —
- (a) the Commission were substituted for the SGIO as a party to the agreement or instrument; and

- (b) any reference in the agreement or instrument to the SGIO were (unless the context otherwise requires) a reference to the Commission.
- (2) Where anything has been lawfully commenced by or under the authority of the SGIO before the commencement day that thing may, unless an order under subclause (5) applies, be carried on and completed by or under the authority of the Commission.
- (3) Without limiting the generality of subclause (2), any proceedings pending immediately before the commencement day to which the SGIO was a party may, unless an order under subclause (5) applies, be continued on or after that day as if the Commission were a party thereto in lieu of the SGIO.
- (4) Except where clause 10 or 11 applies, the Minister may, by order published in the *Gazette*, declare that an agreement or instrument mentioned in subclause (1) shall have effect on and after the day specified in the order as if —
 - (a) the Corporation were substituted for the SGIO as a party to the agreement or instrument; and
 - (b) any reference in the agreement or instrument to the SGIO were (unless the context otherwise requires) a reference to the Corporation.
- (5) The Minister may, by order published in the *Gazette*, declare that a thing mentioned in subclause (2) may be carried on and completed by or under the Authority of the Corporation on and after the day specified in the order.
- (6) An order under subclause (4) or (5) shall operate according to its tenor and the operation of subclause (1) or (2), as the case may be, shall be modified accordingly.

13. Final reports on the operations of the SGIO

- (1) If sections 21(1), (2) and (3) and 22 of the *State Trading Concerns Act 1916* (as applied by section 7(7) of the *State Government Insurance Office Act 1938*⁷ and section 4 of the *Acts Amendment (Financial Administration and Audit) Act 1985*) have not been complied with before the commencement day in respect of the year ending on 30 June 1986, the SGIO and the Auditor General shall

Schedule 4

comply with those provisions (as so applied) in respect of that year as soon as practicable after the commencement day.

- (2) As soon as practicable after the commencement day the SGIO shall cause sections 66, 67 and 68 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the SGIO in respect of the prescribed period, and a report prepared under this subclause shall be deemed to be an annual report for the purposes of section 69 of that Act.
- (3) Notwithstanding section 46(1) the SGIO as constituted immediately before the commencement day shall continue in existence for the purposes of subclauses (1) and (2).
- (4) The Commission shall provide such clerical and other assistance as is reasonably required for the purposes of subclauses (1) and (2).
- (5) The Corporation shall incorporate in, or attach to, the first accounts and statements that it supplies under section 33(a) such accounts and statements as the SGIO would have been required to supply under section 7A(8) of the *State Government Insurance Office Act 1938*⁷ in respect of the prescribed period if that Act had not been repealed by section 46(1).

14. Certain outstanding obligations to be met by the Commission

- (1) The first return submitted by the Commission under section 25(1) of the *Employers' Indemnity Supplementation Fund Act 1980* shall consist of or contain, as the case may require, the payments made, and expenses incurred by the SGIO under that Act during the month to which the statement relates and, without limiting the generality of clause 9(a), those payments and expenses shall be deemed to be payments and expenses to which the Commission is entitled to reimbursement under section 25(2) of that Act.
- (2) Before 1 January 1988 the Commission shall pay to the Treasurer the amount (if any) that the SGIO would have been required to pay under section 7B(1) of the *State Government Insurance Office Act 1938*⁷ in respect of the prescribed period if that Act had not been repealed by section 46(1).

15. Saving of presumption and protection

Notwithstanding section 46(2) and Schedule 3 —

- (a) section 26 of the *Employers' Indemnity Supplementation Fund Act 1980* shall continue to have effect in relation to documents created before the commencement day;
- (b) the protection afforded by section 39 of the *Employers' Indemnity Supplementation Fund Act 1980* extends to acts of things done by the SGIO before the commencement day.

16. Employment of staff of the SGIO

- (1) A person who was, immediately before the commencement day an officer within the meaning of the *Public Service Act 1978*⁴ employed in the SGIO shall be entitled to be employed pursuant to this Act with remuneration corresponding with or higher than that which he received immediately before the commencement day.
- (2) A person who becomes an officer or employee of the Commission pursuant to subclause (1) is entitled to retain all his existing and accruing rights (including, if he is a contributor under the *Superannuation and Family Benefits Act 1938*, his rights under that Act) as if his service as an officer or employee of the Commission were a continuation of his service as an officer of the Public Service.
- (3) A person who becomes an officer or employee of the Commission pursuant to subclause (1) shall, subject to a suitable vacancy being available, be entitled to be reappointed by the Public Service Board³ at the termination of his employment with the Commission, to an office in the Public Service with a classification and remuneration corresponding with that of the office which he last held in the Public Service.
- (4) Subclause (3) does not apply to a person whose employment as an officer or employee of the Commission is terminated for mental or physical disability, incompetence, neglect of duty or misconduct.

17. References to the SGIO in laws

References to the SGIO in a written law, other than this Act or an Act amended by section 46(2) and Schedule 3, shall, unless because of the

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context it would be inappropriate so to do, be read and construed as references to the Commission.

18. Apportionment of assets and liabilities

Assets vested in the Commission under clauses 2(a) and 9(a) and liabilities taken over by the Commission under clauses 2(b) and 9(b) shall, in the first instance, be held to the credit of or against the Insurance Commission General Fund but the Commission may, on or after the commencement day, apportion those assets and liabilities or their value to that Fund and the other Funds in such proportions as the board of commissioners thinks most conducive to the efficient performance of the various functions conferred on the Commission by section 6.

19. Interpretation Act to apply

With respect to the repeals and amendments effected by section 46 and Schedule 3, this Schedule is supplementary to, and does not displace the operation of, the *Interpretation Act 1984*.

Notes

¹ This is a compilation of the *Insurance Commission of Western Australia Act 1986* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>State Government Insurance Commission Act 1986</i>	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p.4859)
<i>Acts Amendment (Public Service) Act 1987</i> , section 32	113 of 1987	31 Dec 1987	16 Mar 1988 (see section 2 and <i>Gazette</i> 16 March 1988 p.813)
<i>Acts Amendment (Accountability) Act 1989</i> , Part 6	5 of 1989	26 Apr 1989	1 Jul 1989 (see section 2 and <i>Gazette</i> 30 Jun 1989 p.1893)
<i>SGIO Privatisation Act 1992</i> , section 28	49 of 1992	9 Dec 1992	7 Jan 1993 (see section 2(3) and <i>Gazette</i> 7 Jan 1993 p.15)
<i>Financial Administration Legislation Amendment Act 1993</i> , Part 4	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see section 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994</i> , Part 4	32 of 1994	29 Jun 1994	1 Oct 1994 (see section 2 and <i>Gazette</i> 30 Sep 1994 p.4948)
<i>Statutory Corporations (Liability of Directors) Act 1996</i> , section 3	41 of 1996	10 Oct 1996	1 Dec 1996 (see section 2 and <i>Gazette</i> 12 Nov 1996 p.6301)

Insurance Commission of Western Australia Act 1986

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (ICWA) Act 1996</i> ^{10, 11}	45 of 1996	25 Oct 1996	Sections 3, 6(b) to the extent it inserts definition of "Commission Account", 6(c), 9 to 12, 15 to 19, 23 and 26: 14 Dec 1996 (see section 2 and <i>Gazette</i> 13 Dec 1996 p. 6901); Sections 4, 5, 6(b) to the extent it inserts the definition of "Commission", 7, 8, Part 3 (ss.29-37): 1 Oct 1997 (see section 2 and <i>Gazette</i> 23 Sep 1997 p. 5357); balance to be proclaimed ^{1a}
<i>Financial Legislation Amendment Act 1996</i> , section 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see section 2(1))
<i>State Enterprises (Commonwealth Tax Equivalents) Act 1996</i> , section 10(1)	55 of 1996	11 Nov 1996	Deemed operative 1 Jul 1996 (see sections 2 and 3(3))
<i>Insurance Commission of Western Australia Amendment Act 2002</i> ¹³	34 of 2002	20 Nov 2002	20 Nov 2002 (see s.2)
<i>Workers' Compensation Reform Act 2004</i> s. 174	42 of 2004	9 Nov 2004	4 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7131)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 17 Div 5	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and are not included in this compilation. For the text of the provisions see the endnote referred to after the short title.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (ICWA) Act 1996</i> s. 6(a), 13, 14, 20, 21, 22, 24, 25, 27 and 28 ¹²	45 of 1996	25 Oct 1996	To be proclaimed (see s. 2)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 50 ¹³	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

² Now the *Life Insurance Act 1995* of the Commonwealth.

³ Under section 112(2) of the *Public Sector Management Act 1994* (No. 31 of 1994) references to the Public Service Board are to be construed as references to the Minister for Public Sector Management.

⁴ Under section 112(1) of the *Public Sector Management Act 1994* (No. 31 of 1994) references to the *Public Service Act 1978* are to be construed as references to the *Public Sector Management Act 1994*.

⁵ Part 3 of the *SGIO Privatisation Act 1992* (No. 49 of 1992) was operative on 24 December 1992.

⁶ The “appointed day” of the *SGIO Privatisation Act 1992* (No. 49 of 1992) was 7 January 1993.

⁷ Repealed under s.46(1) of this Act.

⁸ Now cited as the *Workers’ Compensation and Rehabilitation Act 1981*.

⁹ Section 31(2)(k) was repealed by section 28 of the *SGIO Privatisation Act 1992* (No. 49 of 1992).

¹⁰ Section 11(9) of the *Acts Amendment (ICWA) Act 1996* (No. 45 of 1996) reads as follows —

“

- (9) Anything done before the commencement of a provision of this section, is as valid and has the same force and effect, and is to be regarded as having always been as valid and had the same force and effect, as if that provision and section 10 of this Act had come into operation before the thing was done.

”.

¹¹ Part 3 of the *Acts Amendment (ICWA) Act 1996* (No. 45 of 1996) reads as follows —

“

Part 3 — Transitional and saving provisions

29. Terms used in this Part

In this Part, unless the contrary intention appears —

“**Commission**” and “**Corporation**” have the same meanings as they have, respectively, in the principal Act;

“**ICWA**” means the body continued by section 4 of the ICWA Act;

“**ICWA Act**” means the principal Act as amended by this Act.

30. References to the Commission under its former name in laws and documents

(1) In this section —

“**former name**” means “State Government Insurance Commission”;

“**new name**” means “Insurance Commission of Western Australia”.

(2) Without limiting section 4(1) of the ICWA Act, where, in a written law or in any document of any kind, there is —

- (a) a reference to ICWA by its former name; or

- (b) a reference that was directed by Schedule 4 of the principal Act to be read and construed, or have effect, as a reference to ICWA by its former name,

that reference is, unless because of the context it would be inappropriate to do so, to be construed, or have effect, after section 8 commences as if it had been amended to be a reference to ICWA by its new name.

31. Transfer of Corporation's assets and liabilities to ICWA

- (1) In this section —

“commencement day” means the day on which section 20 commences;

“existing policies” means all policies of insurance existing immediately before the commencement day being policies that were issued by the Corporation or policies under which the Corporation had undertaken liability;

“existing reinsurance policies” means all reinsurance policies existing immediately before the commencement day issued by another person under which the Corporation was reinsured in respect of all or part of its liabilities or risks under existing policies.

- (2) On and after the commencement day —

- (a) all of the assets and rights of the Corporation immediately before the commencement day vest in ICWA by force of this section;
- (b) all the liabilities of the Corporation immediately before the commencement day vest in ICWA by force of this section, so far as they have not been paid or discharged;
- (c) any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a) and (b) has effect, by force of this section, as if ICWA were substituted for the Corporation as a party to the agreement or instrument;
- (d) all proceedings commenced before the commencement day by or against the Corporation are to be taken to be proceedings by or against ICWA;
- (e) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement day by, to or in respect of the Corporation (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done by or omitted, to or in respect of ICWA;

- (f) all existing policies are to be taken to be, and, subject to the terms and conditions of any particular policy, continue to have effect as if they were, policies issued by ICWA;
- (g) all existing reinsurance policies that relate to existing policies are to be taken to be, and, subject to the terms and conditions of any particular reinsurance policy, continue to have effect as if they were, policies that reinsure ICWA in respect of existing policies; and
- (h) a reference to the Corporation in a written law or in any document of any kind is, unless because of the context it would be inappropriate so to do, to be construed, or have effect, as if it had been amended to be a reference to ICWA.

32. Saving provisions relating to transfer of assets and liabilities

The operation of section 31 is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (d) as releasing, or allowing the release of, any surety.

33. Registration of documents

- (1) The Registrar of Titles, the Registrar of Deeds, the Ministers respectively administering the *Land Act 1933* and the *Mining Act 1978*, and any other person authorized by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or other property, are to take notice of the provisions of this Part and are empowered to record and register in the appropriate manner such of those documents as are necessary to give effect to this Part.
- (2) Without limiting subsection (1) a statement in an instrument executed by ICWA that any estate or interest in land or other property has become vested in it under section 31 is evidence of that fact.

34. Cancellation of shares in State Government Insurance Corporation

When section 20 commences the shares held by the Commission under section 39 of the principal Act are cancelled and all rights attached to them are extinguished by force of this section.

35. Exemption from State taxation

- (1) In this section —
“**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
 - (a) anything that occurs by the operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of, giving effect to this Part.
- (3) The Treasurer or a person authorized by the Treasurer may, on request by ICWA, certify in writing that —
 - (a) a specified thing occurred by the operation of this Part; or
 - (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of, giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is conclusive evidence of the matters it certifies, except so far as the contrary is shown.

36. Financial reporting

- (1) If sections 66 to 69 of the *Financial Administration and Audit Act 1985* have not been complied with before the commencement of section 20 in relation to the affairs of the Corporation for a financial year that ended before that commencement, the Minister is to cause those sections to be complied with in relation to that year as soon as practicable after that commencement.
- (2) As soon as practicable after the commencement of section 20 the Minister is to cause sections 66 to 69 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the affairs of the Corporation for the period from 1 July last preceding that commencement to that commencement, and the report is to be regarded as an annual report for the purposes of section 69 of that Act.

- (3) If section 20 commences on 1 July in a year —
 - (a) subsection (2) does not apply; and
 - (b) the Minister is to cause sections 66 to 69 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the affairs of the Commission for the year ending on 30 June in that year.
- (4) Any acts or things done in the administration of this Part are to be regarded —
 - (a) as services for which ICWA is responsible for the purposes of Part II, Division 11 of the *Financial Administration and Audit Act 1985*; and
 - (b) as operations of ICWA for the purposes of Part II, Division 14 of the *Financial Administration and Audit Act 1985*.
- (5) In this section —
“**Minister**” means the Minister administering the ICWA Act.

37. Saving provisions in relation to Schedule 4

- (1) In this section —
“**the schedule**” means Schedule 4 to the principal Act.
- (2) Despite the repeal of the schedule —
 - (a) assets which were vested in, and liabilities which were imposed on, the Commission under clauses 2 and 9 of the schedule and which are still assets and liabilities of the Commission immediately before section 28 commences continue to be assets and liabilities of ICWA; and
 - (b) clauses 1, 3, 4, 10(1), (2)(a) and (6)(a), 12(1), (2) and (3), 15 and 19 of the schedule continue to have effect as if references in them to the Commission were references to ICWA.

¹² On the date as at which this compilation was prepared, the *Acts Amendment (ICWA) Act 1996* s. 6(a), 13, 14, 20-22, 24, 25, 27 and 28 had not come into operation. They read —

“

6. Section 3 amended

- (a) by deleting the definitions of “board of directors”, “Corporation”, “debt paper” and “director of the Corporation”;

13. Section 12 amended

- (1) Section 12(1) of the principal Act is amended by deleting “and the Corporation to carry out their respective functions” and substituting the following —
“ to carry out its functions ”.
- (2) Section 12(4) of the principal Act is amended by deleting “it considers necessary to enable the Commission and the Corporation to carry out their respective functions” and substituting the following —
“
the board considers necessary to enable the Commission to carry out its functions
”.

14. Section 15 amended

Section 15(2)(d) of the principal Act is deleted.

20. Part III repealed

Part III of the principal Act is repealed.

21. Section 42 amended

Section 42(2) of the principal Act is repealed and the following subsection is substituted —
“
(2) This section applies to every person who is or has been a commissioner or alternate commissioner, is or has been an officer or employee of the Commission, or is rendering, or has rendered services to the Commission under section 12, 13 or 13A.
”.

22. Section 43 amended

Section 43(9) of the principal Act is repealed.

24. Section 45 amended

Section 45(2) of the principal Act is repealed and the following subsection is substituted —
“
(2) Without limiting subsection (1), regulations may provide for the use of the common seal of the Commission in Western Australia and elsewhere.

”
25. **Sections 47 and 48 repealed**

Sections 47 and 48 of the principal Act are repealed.

27. **Schedule 2 repealed**

Schedule 2 to the principal Act is repealed.

28. **Schedule 4 repealed**

Schedule 4 to the principal Act is repealed.
”

¹³ On the date on which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 50 had not come into operation. It reads:

“

50. **Insurance Commission of Western Australia Act 1986 amended**

Clause 16(2) of Schedule 4 to the *Insurance Commission of Western Australia Act 1986* is amended by deleting “(including, if he is a contributor under the *Superannuation and Family Benefits Act 1938*, his rights under that Act)”.
”

¹⁴ The *Insurance Commission of Western Australia Amendment Act 2002* s. 10 reads as follows —

“

10. **Transition and savings**

The functions conferred on the Insurance Commission of Western Australia by section 6(ca) and (e) of the *Insurance Commission of Western Australia Act 1986* as amended by this Act are taken always to have been functions of the Commission.
”